

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:19-cv-553-RJC-DCK**

STAYSHA FISHER and CHRISTA)
KISSER, on behalf of themselves and all)
other similarly situated persons,)
)
Plaintiffs,)
)
v.)
)
GEORGE MACK PATTERSON, II; P & A)
MANAGEMENT, INC.; PRAIRIE PIZZA,)
INC.; PATTERSON PIZZA COMPANY,)
LLC; TEAM LINCOLNTON, INC.;)
MOUNTAINEER PIZZA, LLC; AND MJM)
PIZZA, LLC,)
)
Defendants.)

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendants, George Mack Patterson, II (“Patterson”), P&A Management, Inc. (“P&A”), Prairie Pizza, Inc. (“Prairie Pizza”), Patterson Pizza Company, LLC (“Patterson Pizza”), Team Lincolnton, Inc. (“Team Lincolnton”), Mountaineer Pizza, LLC (“Mountaineer Pizza”), and MJM Pizza, LLC (“MJM Pizza”) (collectively, “Defendants”), move to dismiss all claims filed in the First Amended Complaint (“FAC”) by Plaintiffs Staysha Fisher and Christa Kisser, on behalf of themselves and all other similarly situated persons (“Plaintiffs”), with prejudice, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (“FRCP”). Additionally, Team Lincolnton, Mountaineer Pizza, and MJM Pizza move to dismiss Plaintiffs’ claims pursuant to FRCP 12(b)(1). In support of their Motion, Defendants state as follows:

1. In the FAC, as in their original Complaint, Plaintiffs impermissibly attempt to assert claims against numerous corporate and individual entities without clearly delineating the

allegations as to each specific Defendant. The additional “single enterprise” allegations, largely boilerplate, do not cure this deficiency. Because Plaintiffs fail to distinguish the Defendants, they are unable to respond to Plaintiffs’ factual and legal allegations. Therefore, dismissal is warranted pursuant to FRCP 12(b)(6).

2. Plaintiffs have failed to allege sufficient facts to state a claim upon which relief may be granted. Plaintiffs merely allege that isolated deductions purportedly occurred to their salary (and purportedly “upon information and belief” to the salaries of other managers who have not joined the case) over the course of years of employment, which is insufficient to destroy the salary basis of their compensation and convert them into non-exempt employees. Plaintiffs have failed to allege facts showing that the deductions were not those permitted by 29 C.F.R. 541.602(b). Plaintiffs have also failed to allege any facts showing an improper deduction to their bonus, let alone the bonus of any other general manager.

3. Plaintiffs allege in boilerplate fashion that Defendants’ violations of the FLSA were willful, but fail to sufficiently allege facts to support this bare legal recitation. Plaintiffs’ FAC failed to cure this deficiency in the original Complaint. Thus, Plaintiffs’ claim under the FLSA should be limited to the two-year period preceding filing of the Complaint, and any claims beyond this period should be dismissed pursuant to FRCP 12(b)(6).

4. Plaintiffs still lack standing to bring claims against Team Lincoln, Mountaineer Pizza, and MJM Pizza. Plaintiffs do not (and cannot) allege in the Complaint that these corporate entities were their direct employer. Plaintiffs allege that they were directly employed by Prairie Pizza and Patterson Pizza. Plaintiffs’ attempt to expand the class and collective action by including separate corporate entities for whom Plaintiffs did not work is improper and dismissal is warranted pursuant to FRCP 12(b)(1).

5. Plaintiffs have failed to properly assert class and collective action claims.

6. This Motion is based upon the grounds and authorities set forth more fully in the accompanying Memorandum of Law.

WHEREFORE, for the reasons set forth above and discussed more fully in the accompanying Memorandum of Law, Defendants respectfully request that the Court enter an Order dismissing Plaintiffs' FAC, with prejudice, and granting any other or further relief that this Court may deem just, proper, and appropriate.

Filed January 24, 2020.

Respectfully submitted,

By: /s/ Kevin J. Dalton
Kevin J. Dalton (NC Bar No. 24197)
FISHER PHILLIPS LLP
227 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
Telephone: (704) 334-4565
Facsimile: (704) 334-9774
kdalton@fisherphillips.com
ATTORNEYS FOR DEFENDANTS

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I hereby certify that on January 24, 2020, I electronically filed the foregoing **DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send notice of such filing to Plaintiffs' counsel, Eric Spengler, at eric@spengleraganslaw.com.

Served January 24, 2020.

Respectfully submitted,

By: /s/ Kevin J. Dalton
Kevin J. Dalton
FISHER PHILLIPS LLP
ATTORNEYS FOR DEFENDANTS